

No. 91-1229

Supreme Court, U.S.  
FILED

JUL 1 1992

OFFICE OF THE CLERK

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**In the Supreme Court of the United States**

OCTOBER TERM, 1991

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UNITED STATES OF AMERICA, by and through  
INTERNAL REVENUE SERVICE, PETITIONER

v.

BRUCE J. McDERMOTT and BETTY McDERMOTT,  
and ZIONS FIRST NATIONAL BANK, N.A.

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ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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**JOINT APPENDIX**

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PETITION FOR A WRIT OF CERTIORARI FILED: JANUARY 29, 1992  
CERTIORARI GRANTED: MAY 26, 1992

**BEST AVAILABLE COPY**

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APPEAL

U.S. DISTRICT COURT  
DISTRICT OF UTAH  
(Central)

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Case No. 88-CV-399

BRUCE J. McDERMOTT, PLAINTIFF

BETTY B. McDERMOTT, PLAINTIFF

v.

ZIONS FIRST NATIONAL BANK, DEFENDANT

USA /IRS, DEFENDANT

STEVEN F. ALDER, DEFENDANT

---

STEVEN F. ALDER, CROSS-CLAIMANT

v.

USA /IRS, CROSS-DEFENDANT

---

**DOCKET ENTRIES**

DATE	NR.	PROCEEDINGS
4/5/88	1	PETITION FOR REMOVAL from Salt Lake County. Dist Ct of Ut Assigned to HON. J. THOMAS GREENE, JUDGE
6/7/88	2	GOV ANSWER and response to cross-claim
9/7/88	3	Def Zion's Mot for Partial Summ Jdgmt
	4	Def Zion's MEMO in Suppt of Mot for Partial Summ Jdgmt

DATE	NR.	PROCEEDINGS
	5	AFF of T. Richard Davis in Suppt of Mot for Partial Summ Jdgmt
	6	AFF of Philip Meeks in Suppt of Mot for Partial Summ Jdgmt
9/23/88	7	Pltf's Mot for Summ Jdgmt
	8	Pltfs' Memo in Suppt of Mot for Summ Jdgmt
10/6/88	9	Def Zion Bank's Notice of Hrg, re: Mot for Partial Summ Jdgmt, 11-14-88 at 3:00 PM
10/27/88	10	Pltfs' Mot for Summ Jdgmt of Steve Alder (Cross-Claimant)
	11	Pltf's Memo in Suppt of Mot for Summ Jdgmt
	12	AFF of Cheryl M. Bower
	13	Alder's Notice of Hrg, re: Mot for Summ Jdgmt, set for 11-14-88 at 3:00 PM.
11/8/88	14	Def Zion's Memo in Oppos to Gov's Mot for Summ Jdgmt
11/10/88	15	AMND Notice of Hrg, re: Mot for Summ Jdgmt, re-set for 11-22-88 at 11:00 AM. cc; attys
11/16/88	16	Pltfs' Notice of Depos, American Home Assurance Co., 11-20-88.
11/28/88	17	Gov's Memo in Oppos to Alder's Mot for Summ Jdgmt
12/1/88	18	Came before the crt on mots/SJ. Mr. Alder withdrew his mot/SJ & was excused. As to the other 2 mots/SJ, Crt hrd args of Mr. Davis & Mr. Lusty. Discussion held. Cnsl to simultaneously file suppl memo by 12/22, at which time both mots will be deemed under advisement & Crt will rule without hrg further args.
12/22/88	19	Gov's Suppl Memo in Suppt for Summ Jdgmt and in Oppos to Zion's Mot for Summ Jdgmt

DATE	NR.	PROCEEDINGS
12/22/88	20	Def Zion's Suppl Memo in Suppt of Def's Mot for Partial Summ Judgment
1/18/89	21	MEMO DECISION/ORDER JTG 1/17/89 re: Zions Bank's mot/partial sj is GRANTED and IRS Mot/partial SJ is DENIED; Zions Bank to submit judgment cc:attys
2/8/89	22	DEF supplemental aff of T. Richard Davis re: atty fees
2/9/89	23	JUDGMENT and DIRECTIVE of payment JTG 2/8/89 re: Clerk of the Court is ordered to make immediate payment of \$86,933.13 to Zions Bank and retain the remainder of the fund held in this matter for future determination of this court cc:attys
3/3/89	24	File received from Third Judicial District Court
3/14/89	25	RECEIPT showing T. Richard Davis, Esq received check for \$86,933.13
4/26/89	26	GOV Memo in support of mot/dismiss cross-claim
	27	GOV mot/dismiss cross-claim
5/10/89	28	PLTF response to mot/dismiss and notice of reduction of Alder's claim
5/17/89	29	GOV notice of hrg set for 7/17/89 at 11:00 Am re; mot/dimiss cross-claim
6/7/89	30	GOV mot/sj
	31	GOV memo in support of mot/sj
	32	GOV memo in support of obj and mot/strike
	33	GOV notice of hrg set for 8/21/89 at 11:00 Am re: mot/sj and mot/strike and mot to dismiss cross-claim

DATE	NR.	PROCEEDINGS
6/23/89	34	PLTF memo in oppo to Zion's mot/sj
7/18/89	35	GOV Notice to take depo of Alder 9/1/88 9:30 Am; McDermott 11:30AM; Hansen 2:00 PM
8/21/89	36	MIN. ENTY/MSJ-Mot/Dism. MOTS DENIED. Ct fixed the following sched.: Disc/c/o 11/13/89. PT Conf set on 11/13/89 at 10:45 AM Ct granted Mr. Alder lv to amend reduction of attys fees to \$9000 by interlineation.
9/19/89	37	ORDER JTG 9/18/89 re: cross-claim of Alder is reduced by interlineation from \$11,815.48 to \$9,000; US mot/sj is DENIED; set for pre-trial conf 11/13/89 at 10:45 Am cc: attys
11/13/89	38	Minute entry: Final Pretrial Conference held—pltf is going to dismiss the action and a stip and order of dismissal will be filed before 11/17/89; case was dismissed; it was agreed that the funds being held by the Clerk of Court will be released to the govt [Entry date 1/30/89]
12/6/89	39	Order signed by JTG 123/5/89 re: cross-claim of Alder against the US is dismissed w/prej; complt of pltf insofar as that complt seeks relief against the US is dismissed w/prej and Clerk of Court directed to pay to US all funds now held by the Clerk of the Court cc:attys [Entry date 12/7/89]
12/7/89	—	Case closed
1/29/90	40	Notice of appeal by USA/IRS, appealing the order entered 1/10/89 and the final judg entered 12/6/89; Fee Status: not required [Entry date 2/1/90]
2/1/90	41	Notice of appeal and certified copy of docket to USCA and cnsl: [40-1] appeal

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

No. 90-4023

BRUCE J. McDERMOTT, PLAINTIFF

BETTY B. McDERMOTT, PLAINTIFF

v.

ZIONS FIRST NATIONAL BANK, DEFENDANT-APPELLEE

v.

INTERNAL REVENUE SERVICE OF  
THE UNITED STATES, DEFENDANT CROSS CLAIM  
DEFENDANT-APPELLANT

STEVEN F. ADLER, DEFENDANT

DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
2/7/90	1	[406200] Civil case docketed. Preliminary record filed. Transcript order form due 2/8/90 for Reeve Butler pursuant to R.42.1. Docketing statement due 2/20/90 for IRS. Appellant's brief due 3/12/90 for IRS, Appellant's designation of record due 3/12/90 for IRS. Notice of appearance due 2/20/90 for Kirk C. Lusty, for T. Richard Davis (mt)
2/12/90	2	[407434] Notice received from that a transcript is not necessary for this appeal. (lwb)
2/12/90	3	[407435] Docketing statement filed by IRS. Original and 0 copies c/s: y. (lwb)



DATE	NR.	PROCEEDINGS
2/12/90	4	[407436] Order filed by Judge(s) RLH—docketing statement attachments due 2/22/90 for IRS pursuant to Rule 42. (lwb)
2/20/90	6	[409172] Notice of appearance filed by T. Richard Davis as attorney for Zions First National. CERT. OF INTERESTED PARTIES (y/n): y (lwb)
2/22/90	7	[409634] Docketing statement attachments filed by IRS. 4 copies. (lwb)
2/28/90	8	[411024] Notice of appearance filed by Gary R. Allen, Shirley D. Peterson, James H. Love as attorney for IRS. CERT. OF INTERESTED PARTIES (y/n): n (lwb)
2/28/90	9	[411028] Order filed by RLH notice of appearance form due 3/12/90 for Kirk C. Lusty (lwb)
3/23/90	10	Attorney terminated: attorney Kirk C. Lusty for IRS (lwb)
3/23/90	11	[416606] Order filed by RLH—Appellant's brief due 4/2/90 for IRS Appellant's designation of record due 4/2/90 for IRS (lwb)
3/30/90	13	[418476] Appellant's motion filed by Appellant IRS to extend time to file appellant's brief until 4/27/90 [90-4023]. Original and 3 copies c/s: y (lwb)
3/30/90	14	[418477] Order filed by (lwb) RLH granting Appellant/Petitioner motion to extend time to file apet brief [418476-1] (lwb)
5/1/90	15	[426409] Appellant's brief received but not filed by IRS. 5/7/90 for IRS Appellant's designation of record due 5/17/90 for IRS (lwb)
5/1/90	16	[426750] Notice of appearance filed by William S. Estabrook as attorney for IRS. CERT. OF INTERESTED PARTIES (y/n): n (lwb)

DATE	NR.	PROCEEDINGS
5/1/90	17	[426754] Designation of record filed by Appellant IRS. Original and 1 copies. [90-4023] (lwb)
5/17/90	18	[429630] Notice of appearance filed by Regina S. Moriarty as attorney for IRS. CERT. OF INTERESTED PARTIES (y/n): n (klb)
5/17/90	19	[429636] Appellant's brief filed by IRS. Original and 7 copies. c/s: yes. Served on 5/16/90 Oral argument? yes. Appellee's brief due 6/18/90 for Zions First National (klb)
6/18/90	90	[436572] Appellee's motion to extend time to file appellee's brief until 7/18/90 filed by Zions First National. Original and 3 copies. c/s: y (lwb)
6/19/90	21	[436573] Order filed by (lwb) RLH granting Appellee/Respondent motion to extend time to file eres brief [436572-1] 7/18/90 for Zions First National (lwb)
7/18/90	22	[443702] Designation of record filed by Appellee Zions First National. Original and 1 copies. [90-4023] (lwb)
7/18/90	23	[443704] Appellee's brief filed by Zions First National. Original and 7 copies. c/s: y. Served on 7/17/90 Oral Argument? yes Appellant's optional reply brief due 8/3/90 for IRS (lwb)
7/26/90	24	[444657] Order filed by Judge(s) Holloway—Record on Appeal due 8/6/90 for J. Thomas Greene pursuant to Rule 11.1. (lwb)
8/7/90	26	[447465] Record on appeal filed: 1 Volume(s) —Copy filed in Volume(s) (y/n): yes. Vol. 1—pleadings (lwb)

DATE	NR.	PROCEEDINGS
2/22/90	29	[490241] Hearing set for May 1991 Session, at Denver. (sls)
3/25/91	30	[497722] Appellant's settlement conference report filed. Original and 0 copies (lwb)
3/27/91	31	[498230] Appellant's settlement conference submitted to panel. (sls)
4/15/91	32	[505106] Notice that appeal did not settle filed by Appellee Zions First National. Original and 0 copies. c/s: y (lwb)
5/6/91	34	[507505] Case argued and submitted to Judges Tacha, Seth, Bratton. (sls)
7/29/91	36	[528733] Order filed by Judge(s) Tacha, Seth, Bratton to supplement the record on appeal Supplemental roa due 8/8/91 for J. Thomas Greene Parties served by mail. (lwb)
8/13/91	39	[532834] Supplemental record filed: Sup. Vo. 1 Copy filed in Volume(s) : yes. pleadings (lwb)
10/2/91	40	[543502] Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Tacha, panel member; Seth, panel member; Bratton, authoring judge. [90-4023] (kas)
10/24/91	41	[548016] Mandate issued to district court. (mt)
11/1/91	42	[563804] Mandate receipt filed. (lwb)
2/4/92	43	[572482] Petition for writ of certiorari filed on 1/29/92 by Appellant IRS. Supreme Court Number 91-1229. (mt)
5/29/92	44	[596601] Supreme Court order dated 5/26/92 granting certiorari filed. (kc)

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY  
STATE OF UTAH

—  
No. C88-02264

Judge Frank G. Noel

BRUCE J. McDERMOTT and BETTY B. McDERMOTT,  
PLAINTIFFS

vs.

ZIONS FIRST NATIONAL BANK, N.A., and THE UNITED  
STATES OF AMERICA by and through the INTERNAL  
REVENUE SERVICE, and STEVEN ALDER, DEFENDANTS

—  
STEVEN F. ALDER, CROSS-CLAIMANT

v.

THE UNITED STATES OF AMERICA and the INTERNAL  
REVENUE, CROSS-CLAIM DEFENDANT

—  
**COMPLAINT FOR INTERPLEADER AND  
DECLARATORY RELIEF AND CROSS-CLAIM**

COMES NOW the Plaintiffs, and for cause of action  
alleges as follows:

1. This action is brought pursuant to Utah Code Annotated, § 70A-7-602 and Rule 22 of the Utah Rules of Civil Procedure.

2. Venue is properly with this Court.

3. Plaintiffs are individuals residing at 1008 South 1900 East, Salt Lake City, Salt Lake County, Utah and are hereinafter referred to as "McDERMOTT" or "Taxpayer".

4. Plaintiffs have "cash proceeds", the value of which is \$500.00 or more, which proceeds are governed by the attached Escrow Agreement dated on or about March 4, 1988. See Exhibit "A".

5. Plaintiffs shall, in conjunction with the filing of this action, deposit said cash proceeds into the registry of the court, there to abide the judgment of this court.

6. Plaintiffs further seek, by an Ex-Parte Motion filed with this Complaint, an order to be prepared and signed by the presiding judge, allowing the funds deposited herewith to be placed in an interest-bearing account for the benefit of the parties, as the court may hereafter determine their rights.

7. Defendant, ZIONS FIRST NATIONAL BANK (hereinafter "ZIONS") is registered as a national banking association with its principal place of business in the State of Utah. ZIONS' registered agent is Duane B. Wellington, 350 Kennecott Building, Salt Lake City, Utah. Its attorney of record in this matter is T. Richard Davis, 800 Kennecott Building, Salt Lake City, Utah.

8. ZIONS is claiming, or may claim, to be entitled to a portion of the cash proceeds deposited herewith by virtue of a judgment in the amount of \$67,977.67 at 12 percent interest against McDERMOTT, docketed in Book 213 at Page 2402 on June 22, 1987.

9. Defendant UNITED STATES OF AMERICA, by and through the INTERNAL REVENUE SERVICE (hereinafter "IRS") is claiming, or may claim, to be entitled to a portion of the cash proceeds deposited herewith by virtue of a tax lien filed against McDERMOTT in the amount of \$103,657.93 on September 9, 1987. Said lien was filed with the Salt Lake County Recorder's Office and is recorded as Entry No. 4519592 of the official rec-

ords. The Internal Revenue Service officer filing said tax lien is Richard Hardman, Chief of Special Procedures.

10. Defendant, STEVEN F. ALDER (hereinafter "ALDER") is claiming, or may claim, to be entitled to a portion of the cash proceeds deposited herewith by virtue of the provisions of Utah law and equity for services performed on behalf of Plaintiff as described herein.

11. At the time that the lien was filed and the judgment docketed against McDERMOTT, McDERMOTT claimed an interest to certain real property located at 2091 East 1300 South, Salt Lake City, Salt Lake County, Utah, by virtue of a Trust Deed and Trust Deed Note executed in connection with a certain Uniform Real Estate Contract (hereinafter "UREC") dated August 21, 1981, wherein McDERMOTT appears as seller of the above-described property and Ron W. Christensen and Gary L. Carter appear as buyers. See Exhibits "B" through "D". The legal description of the property is as follows:

Commencing at a point 176.41 feet West from the Original Southeast corner of Lot 1, Block 27, Five Acre Plat "C", Big Field Survey, and running thence North 140.99 feet; thence West 55.0 feet; thence South 140.99 feet; thence East 55.0 feet to the place of commencement.

Also:

Commencing 100 feet West from the Southeast corner of Lot 1, Block 27, Five Acre Plat "C", Big Field Survey, and running thence South 89 degrees 57' West 76.41 feet; thence North 140.99 feet; thence North 89 degrees 57' East 76.41 feet; thence South 140.99 feet to the place of beginning.

Said Trust Deed was recorded in Book 5284 at page 957 as Entry No. 3597857 on August 14, 1981. Notice of the UREC attached as Exhibit "B" hereto was disclosed by a certain notice of contract dated August 21, 1981, and



recorded August 24, 1981, as Entry No. 3597856 in Book 5284 at Page 956 of the official records.

12. A breach of the obligations of the Trust Deed Note for which the property was conveyed as security occurred in the fall of 1985, and Steven F. Alder was substituted as Trustee. Notice of Default was recorded February 7, 1986, as Entry No. 4198987 in the official records and said trustee proceeded to foreclose on the property by Trustee's Sale scheduled for June 20, 1986.

13. Prior to the Trustee's Sale schedule for June 20, 1986, the buyers, Ron Christensen and Gary Carter, assigned their interest in the UREC described herein to C&C Investments. Said assignment was recorded as Entry No. 4263843 in Book 5780 at Page 610 of the official records on June 19, 1986. See Exhibit "E".

14. On June 20, 1986, said entity, C&C Investments, filed a petition under Chapter 11 of the Bankruptcy Code styled as Case No. 86A-02610. Pursuant to Section 362 of the Bankruptcy Code, the Trustee's Sale was stayed.

15. During the course of the bankruptcy proceedings, McDERMOTT actively pursued the debtor in an attempt to have the property released from the bankrupt estate. These efforts culminated in provisions 5.1 in the Confirmed Plan of Reorganization allowing McDERMOTT to exercise all legal and equitable rights against the property in the event debtor failed to obtain a written purchase offer by August 15, 1987. See Exhibits "F" and "G".

16. On or about August 15, 1987, the debtor informed McDERMOTT that no offer had been obtained. McDERMOTT informed the debtor's attorney that he intended to proceed and foreclose on the Trust Deed as allowed under paragraph 5.1 of the Plan.

17. Thereafter, the Trustee's Sale was re-noticed, posted and published as required by statute. See Exhibits "H" through "J". Said Trustee's Sale was held October 23, 1987.

18. After the sale, McDERMOTT approached Meridian Title Company (hereinafter "Meridian"), designated es-

crow agent in the Escrow Agreement (attached as Exhibit "A" hereto) for a policy of title insurance with respect to the property. In issuing the policy and providing fee simple title, Meridian required releases from ZIONS and the IRS of any interest they may claim with respect to the property.

19. In order to obtain these releases, the parties entered into an original Escrow Agreement dated December 31st attached as Exhibit "K" hereto to provide for a determination of the priorities of the parties to the cash proceeds.

20. McDERMOTT is currently working with the IRS to abrogate the tax liability claimed by the IRS. McDERMOTT contests the amounts assessed and the validity of the liens.

21. The terms of the December 31st Escrow Agreement Exhibit "K" represented a full and complete understanding as to the terms and conduct of the parties with respect to their rights against the proceeds to be deposited herewith and was intended and executed by all parties with an intent to be bound thereby.

22. Thereafter the IRS through various individuals refused to abide by terms of said Escrow and a new Escrow Agreement dated March 4th, Exhibit "A" was executed.

23. Pursuant to the terms of the new Escrow Agreement, (Exhibit "A") Defendant ZIONS was to provide the title company with a release as to the real property which is the subject matter of this dispute. A copy of this release is attached as Exhibit "L" hereto.

24. Pursuant to the terms of the new Escrow Agreement (Exhibit "A"), the IRS was to provide the title company with a Certificate of Discharge with respect to the real property and the lien filed by the IRS as described herein. A copy of this release is attached as Exhibit "M" hereto.

25. STEVEN F. ALDER has rendered service on behalf of McDERMOTT as described herein culminating in negotiating the Escrow Agreement and preparing in-

terpleader action for which he has expended considerable sums and for which payment was to be made out of the proceeds of this sale and which have not been received. See Exhibit "N".

### CROSS-CLAIM

26. Defendant STEVEN F. ALDER for cause of action against the United State of America by and through the Internal Revenue Service realleges and by this reference incorporates paragraphs 1 through 24 herein and further alleges as follows:

27. Defendant STEVEN F. ALDER (hereafter "ALDER"), Cross-Claimant, is an attorney licensed within the state of Utah.

28. Cross-Claim Defendant UNITED STATES OF AMERICAN by and through the Internal Revenue Service (hereinafter "IRS") by the action of its employees is liable to the Cross-Claimant for breach of the escrow agreement.

29. ALDER performed certain services as described herein and as disclosed by the attached statements for BRUCE J. and BETTY B. McDERMOTT for the period April 1, 1986 through March 31, 1988. Cheryl M. Brower (hereafter "Brower") is an attorney licensed to practice within the State of Utah and at all relevant times hereto was employed by STEVEN F. ALDER to help represent BRUCE J. and BETTY B. McDERMOTT. The reasonable value of these services, after giving offsets and credits for services performed in connection with matters unrelated to this dispute is \$11,815.48 through February 29, 1988. (See statements attached hereto as Exhibits "N-1 through N-16".)

30. In negotiating and representing McDERMOTT, all parties to the Escrow Agreement agreed that compensation for said services rendered as described herein would be paid to STEVEN F. ALDER out of the proceeds of the sale to Hansen prior to the funds being placed with

the court in connection with this interpleader action. Said amount was not fully calculated but was approximated to be not less than \$9,000.

31. At no time did the IRS through its agents request that the Escrow Agreement be modified to omit the provision allowing for attorneys fees. See affidavit of Cheryl M. Brower.

32. After the Escrow Agreement, dated December 31, 1987, was signed by all parties including the IRS by its agent Clesse Hilton as acting chief of Special Procedures, the IRS through its agents informed ALDER that it did not consider the Escrow Agreement binding, and requested changes. The modified agreement, again providing for attorneys fees, was accepted by all parties.

33. Thereafter, the IRS through its agents, after requesting additional modifications to the escrow refused to comply with the terms of the escrow and provide the certificate of discharge as required by the terms of the escrow unless ALDER waived his attorneys fees and plead himself as a defendant in this action.

34. Defendant IRS, by refusing to comply with said escrow breached the Escrow Agreement.

35. As a result of said breach, ALDER has been damaged as follows:

A. If ALDER's priority is adjudged inferior to the position of ZIONS and the IRS in an amount not less than \$11,815.40, together with the costs and expenses of bringing this action.

B. If ALDER prevails in the above litigation and is awarded his fees out of the proceeds of the interpleader action prior to ZIONS or the IRS or both of them for the amount of the costs and expenses of bringing this action.

WHEREFORE, by reason of these conflicting claims of Defendants and the unsure status of McDERMOTT's tax liability to the IRS, Plaintiffs are in great doubt as



to the priorities of the Defendants and are uncertain which Defendant, if any, is entitled to be paid from the cash proceeds deposited herewith and, therefore, Plaintiffs demand that the court adjudge and order:

1. That each of the Defendants be restrained from instituting any action against Plaintiffs for the recovery of said cash proceeds until a final determination as to priority and entitlement said Defendants may have to said cash proceeds, including the extent of the Plaintiffs' liability is determined by the IRS, its hearing officers, or otherwise.

2. That the Plaintiffs' liability to the IRS is not fixed and that the lien filed is null and void as to the property and the proceeds and that the IRS be further required to disgorge a previous levy of \$38,235.14 and place said amount with the registrar of the court until such time as a binding final determination of tax liability can be made as between McDERMOTT and the IRS.

3. That the court make a determination of the priorities of the Defendants subject to the final determination of the Plaintiffs' liability to the Defendant IRS.

4. For judgment in favor of ALDER against the IRS as prayed in Cross-Claim for plaintiff's attorneys fees.

5. That Plaintiffs recover their costs.

6. For such other and further relief as is proper in the premises.

DATED THIS 5th day of April, 1988.

/s/ Steven F. Alder  
STEVEN F. ALDER  
Attorney for Plaintiffs

Plaintiffs' Address:

1008 South 1900 East  
Salt Lake City, UT

## ESCROW AGREEMENT AND INSTRUCTIONS TO TITLE COMPANY

THIS AGREEMENT made this 4th day of March, 1988, between Bruce J. McDermott and Betty B. McDermott (hereinafter referred to as "McDermott"), Alder & Brower (hereinafter referred to as "Alder") the Internal Revenue Service (hereinafter referred to as "IRS") and Zions First National Bank (hereinafter referred to as "Zions").

WHEREAS, on or about the 21st day of August, 1981, McDermott, as Seller entered into a Uniform Real Estate Contract with Ron W. Christensen and Gary L. Carter (hereinafter referred to as "Christensen"), as buyers for the sale and purchase of a certain parcel of real property and improvements affixed thereto located in Salt Lake County, State of Utah, more particularly described in Exhibit "A" attached hereto (hereinafter referred to as the "Property"); and

WHEREAS, in compliance with a term of said Uniform Real Estate Contract, also on the 21st day of August, 1981, Christensen executed in favor of McDermott a Promissory Note in the amount of \$146,000.00 secured by a Trust Deed covering Christensen's interest in the Property under the said Contract; and

WHEREAS, Christensen defaulted in performance of the obligations set forth in said Trust Deed and Promissory Note; and

WHEREAS, the Property was duly sold in accordance with the Laws of the State of Utah at a Trustee's Sale on September 23, 1987, to Bruce J. McDermott on the foreclosure of the said Trust Deed through a bid by Bruce J. McDermott in the amount of \$305,074.63 at the Trustee's Sale (a copy of the Trustee's Deed is attached as Exhibit "B" hereto) which bid included the assumption of an underlying obligation against the Property in the approximate amount of \$119,950.00 and the remainder

as a credit bid of approximately \$185,124.63 as against the defaulted Trust Deed obligation; and

WHEREAS, McDermott has entered into a certain Earnest Money Sales Agreement with Robert R. Hansen and Helen A. Hansen (hereinafter referred to as Hansen) dated September 17, 1987 (attached as Exhibit "C") for the sale of the Property with the condition that title to the Property be fully marketable and insurable in fee simple; and

AND WHEREAS, Zions claims a lien by virtue of a judgment entered against Bruce J. McDermott on June 22, 1987, in the amount of \$67,977.67 docketed in Book 213 at Page 2400, and the IRS filed a lien against McDermott on September 9, 1987, in the amount of \$103,657.93, within 30 days prior to said Trustee's Sale as Entry No. 4519592 (the IRS having released its redemption rights as to other tax liens to which it received notice as required by statute (see Exhibit "D" hereto);

AND WHEREAS, Meridian, as title insurer, requires a release of the Property from the Zion's Judgment Lien and a discharge of the McDermott tax lien filed September 9, 1987, described in the next preceding paragraph hereto;

AND WHEREAS, Alder claims a portion of the proceeds of the proposed sale for legal services performed by Alder as attorney for McDermott, pursuant to Utah Code Annotated § 57-1-29 and other laws of the State of Utah;

AND WHEREAS, the transaction between McDermott and Hansen is an "arms length" transaction at the fair market value of said property and the parties desire to comply with requirements of Meridian to insure clear title in Hansen;

AND WHEREAS the Escrow Agent is a licensed title company doing business in the State of Utah and is prepared to provide a policy of title insurance on the property provided that the conditions of this agreement

are satisfied and is otherwise prepared to proceed in accordance with this agreement;

NOW, THEREFORE, for good and valuable consideration, the adequacy of which is hereby acknowledged,

# IT IS MUTUALLY AGREED AS FOLLOWS:

1. McDermott shall deliver to Meridian Title Company (hereinafter referred to as "Escrow Agent") which Meridian shall cause to be recorded as required herein at the offices of the Salt Lake County Recorder, the following: the Trustee's Deed a copy of which is attached as Exhibit "B" hereto, and a Warranty Deed conveying title to the above-referenced properties to Robert R. Hansen and Helen A. Hansen, as joint tenants.

2. The sum of \$270,000.00 is hereby delivered to Escrow Agent. Escrow Agent is hereby instructed to distribute the following amounts in the following priorities from said sum:

(a) Property taxes due for the years 1986 and 1987 and pro-rated taxes for 1988 in the total amount of \$10,089.66, together with all other necessary and customary prorations as of the date of closing the sale;

(b) Amounts necessary to obtain a release and Reconveyance of the Trust Deed recorded in favor of First Security Bank of Utah in Book 3690, Pages 108-110 of the official records of the Salt Lake County Recorder's Office, together with attorney's fees, in the approximate amount of \$119,950.00 (assigned to Lomas & Nettleton);

(c) \$980.00 to Escrow Agent for the purchase of the Policy of title insurance;

(d) Recording fees, closing costs, attorneys fees, and costs of escrow in the amount of \$700.00 to Escrow Agent;

(e) Costs of repair or replacement of the heating equipment located in the building on the Property



which must be in working order for the consummation of the sale in an amount not to exceed \$4,900.00 to the entity providing said materials and services; and

(f) Escrow Agent shall hold all remaining amounts and distribute them as directed in paragraph 7 herein.

3. It is understood that the releases delivered herewith by the IRS and Zions are unconditional. The monies placed in escrow shall be in lieu of all legal or equitable rights of the IRS and Zions to the real property released by them as part of this agreement. Neither party hereto waives any rights, defenses and claims that they may have had or any of them may have had in any interest in and to the real property, such rights being reserved and shall apply to the cash proceeds being held in escrow in substitution of the subject real property. The respective priorities of the parties to the cash proceeds shall be identical to the priorities of the respective liens of the parties as they existed against the real property as of September 23, 1987, after Bruce J. McDermott successfully bid and purchased the property at the Trustee's Sale, notwithstanding the change in form of collateral.

4. The IRS hereby delivers to the Escrow Agent a Certificate of Discharge releasing any and all interest of the IRS as to the property described herein.

5. Zions hereby delivers to the Escrow Agent a Partial Release releasing any and all of its Judgment lien as against the above referenced property.

6. Escrow Agent is instructed to record in this Order the Trustee's Deed, Partial Release and Certificate of Discharge and Warranty Deed only upon the occurrence of the following conditions:

(a) Escrow Agent has received a fully executed Escrow Agreement;

(b) Escrow Agent has received the sum of \$270,000.00 as described herein, and;

(c) Escrow Agent has received all documents required under this Agreement.

7. Escrow Agent shall hold all cash proceeds after payment of the items set forth in paragraph 2 herein until presented with an order of the United States District Court directing the payment of said cash proceeds to the Clerk of the United States District Court or other designated party. An interpleader action shall be filed with the United States District Court by McDermott immediately after all terms of paragraph 6 of this Agreement have been satisfied.

8. Notice to the Escrow Agent shall be deemed given only when sent to Escrow Agent by certified mail, return receipt requested and postage prepaid, and addressed to the Escrow Agent at 64 East 6400 South, Suite 300, Salt Lake City, UT 84107, or such other address as the Escrow Agent may inform the parties of in writing.

9. Escrow Agent, its officers, agent and employees, are to act hereunder as depository only and are not responsible or liable in any manner for the sufficiency or execution of the obligations of the parties hereunder, except to hold in escrow the funds deposited and deliver them to the parties as required hereby.

10. These funds shall be held in an interest-bearing account until distribution to the United States District Court. Thereafter, if interest is permitted to be paid by the Court, the funds shall be placed in an interest-bearing account and all interest earned shall be subject to the reasonable charges of Escrow Agent for the establishment and handling of this escrow.

11. This Agreement may be modified only in writing signed by the parties, and the Escrow Agent shall be given notice as described in paragraph 9 herein of any modification.

12. This Agreement shall be construed in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, the parties have set their hands and seals and caused the foregoing instrument to

be executed on its behalf by its authorized officers this  
4th day of March, 1988.

/s/ Betty B. McDermott  
BETTY B. McDERMOTT

ZIONS FIRST NATIONAL BANK

By: /s/ Allen L. Pitt  
Its: V.P.

/s/ Bruce J. McDermott  
BRUCE J. McDERMOTT  
ADLER & BROWER

INTERNAL REVENUE SERVICE

By: /s/ Steven F. Alder  
STEVEN F. ALDER  
Its: owner

By: /s/ [Illegible]  
Its:

STATE OF UTAH )  
 ) ss  
COUNTY OF SALT LAKE )

Personally appeared before me Bruce J. McDermott  
who states that he had read the foregoing instrument and  
executed the same.

Subscribed and sworn to before me this 4th day of  
March, 1988.

• /s/ Steven F. Alder  
Notary Public

My Commission Expires: Residing At:  
2-1-90 Salt Lake City

STATE OF UTAH )  
 ) ss  
COUNTY OF SALT LAKE )

Personally appeared before me Betty B. McDermott  
who states that she had read the foregoing instrument  
and executed the same.

Subscribed and sworn to before me this 4th day of  
March, 1988.

/s/ Steven F. Alder  
Notary Public

My Commission Expires: Residing At:  
2-1-90 Salt Lake City

STATE OF UTAH           )  
                                   ) ss  
 COUNTY OF SALT LAKE    )

On the 3rd day of March, 1988, personally appeared before me Allen L. Potts, who being by me duly sworn did say that he is the Vice President of Zions First National Bank, the national association that executed the above and foregoing instrument, and that said instrument was signed in behalf of said national association by authority of a resolution of its board of directors and said Allen L. Potts acknowledged to me that said national association executed the same.

/s/ [Illegible]  
 Notary Public

My Commission Expires:  
 2-10-92

Residing At:  
 Utah County

STATE OF UTAH           )  
                                   ) ss  
 COUNTY OF SALT LAKE    )

On the 4 day of March, 1988, personally appeared before me Richard Heldman, who being by me duly sworn did say that he is the Chief Special Procedures of the Internal Revenue Service, a government agency of the United States Treasury Department that executed the above and foregoing instrument, and that said instrument was signed in behalf of said governmental agency of the United States Treasury Department by authority of its seal and said Richard Hedman acknowledged to me that said governmental agency of the United States Treasury Department executed the same.

/s/ [Illegible]  
 Notary Public

My Commission Expires:  
 August 7, 1988

Residing At:  
 Salt Lake City, Utah

STATE OF UTAH           )  
                                   ) ss  
 COUNTY OF SALT LAKE    )

On the 4th day of March, 1988, personally appeared before me Steven F. Alder, who being by me duly sworn did say that he is the owner of Alder & Brower, a sole proprietor that executed the above and foregoing instrument, authority of its partnership agreement and said Steven F. Alder acknowledged to me that said partnership executed the same.

/s/ [Illegible]  
 Notary Public  
 Residing At:

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

Civil No. 88C-399G

BRUCE J. McDERMOTT, ET AL., PLAINTIFFS

vs.

ZIONS FIRST NATIONAL BANK, N.A., ET AL., DEFENDANTS

**AFFIDAVIT OF PHILLIP MEEKS  
IN SUPPORT OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

STATE OF UTAH                    )  
  ) ss  
COUNTY OF SALT LAKE        )

PHILLIP MEEKS, being first duly sworn on oath, deposes and says:

1. Affiant is a loan officer employed by Zions First National Bank, a national banking association (hereinafter "Zions"), and has personal knowledge of all statements of fact set forth herein.

2. On June 2, 1987, the Honorable Raymond S. Uno, Judge of the Third Judicial District Court of Salt Lake County, State of Utah executed and entered an Order and Summary Judgment in favor of Zions and against Bruce McDermott in the total amount of \$67,977.67 together with post-judgment interest accruing at the rate of twelve percent (12%) per annum and reasonable attorney's fees incurred in the collection of said judgment.

A true and correct copy of said Order and Summary Judgment is attached hereto as Exhibit "A".

3. The Clerk of the Third District Court docketed said Order and Summary Judgment in Book 213 as No. 2402 on July 6, 1987 at 8:05 a.m.

4. On September 9, 1987, the United States of America, by and through the Internal Revenue Service (hereinafter "IRS") filed a Notice of Federal Tax Lien Under Internal Revenue Laws against Bruce J. McDermott and Betty B. McDermott with the Salt Lake County Recorder's Office, as Entry No. 4519592, alleging an unpaid balance of assessment in the amount of \$103,657.93. A true and correct copy of said Notice of Federal Tax Lien as is on file at the Recorder's office is attached hereto as Exhibit "B".

DATED this 2nd day of September, 1988.

/s/ Phillip Meeks  
PHILLIP MEEKS

SUBSCRIBED AND SWORN to before me this 2nd day of September, 1988.

/s/ [Illegible]  
Notary Public  
Residing at: SLC Utah

(Certificate of Mailing Omitted in Printing)



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

No. 88C-399G

BRUCE J. McDERMOTT, ET AL., PLAINTIFFS

vs.

ZIONS FIRST NATIONAL BANK, N.A., ET AL., DEFENDANTS

**JUDGMENT AND DIRECTIVE OF PAYMENT**

The above-entitled matter came on regularly for hearing on Defendants' respective Motions for Summary Judgment on December 1, 1988; Plaintiff being represented by counsel, Steven F. Alder; Steven F. Alder also appearing pro se; the United States being represented by Kirk C. Lusty; and Zions First National Bank ("Zions") being represented by T. Richard Davis; Alder having withdrawn his Motion for Summary Judgment; the Court having heard argument of counsel and having reviewed the legal memoranda submitted by the United States and Zions; and being fully advised in the premises, entered its Memorandum Decision and Order granting Zions' Motion and denying United States' Motion on January 17, 1989.

NOW THEREFORE based on said Memorandum Decision and Order and supported by the Supplemental Affidavit of T. Richard Davis regarding attorneys' fees, Judgment is hereby entered as follows:

1. The lien of Zions on the proceeds held by the Clerk of this Court is prior in right to that of the United States.

2. The claim of Steven F. Alder to the proceeds held by this Court, if any claim is found to be recoverable by Alder, may be prior in right to that of Zions'; however, sufficient proceeds are held by the Court to more than satisfy the claims of Zions and Alder.

3. Zions is entitled to immediate payment of its lien in the following amount:

Original Judgment	\$67,977.67
Interest at 12% from June 22, 1987 through February 1, 1989	\$13,141.11
Reasonable Attorneys' Fees and Costs	\$ 5,814.35
Total lien claims	\$86,933.13

4. The Clerk of this Court is hereby ordered to make immediate payment of \$86,933.13 to Zions First National Bank and retain the remainder of the funds held in this matter for future determination of this Court.

DATED: February 8, 1989.

/s/ J. Thomas Greene  
J. THOMAS GREENE  
United States District Judge

(Certificate of Mailing Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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Civil No. 88C-399G

BRUCE J. McDERMOTT, ET AL., PLAINTIFFS

*v.*

ZIONS FIRST NATIONAL BANK, N.A., ET AL., DEFENDANTS

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**ORDER**

This matter came before the United States District Judge J. Thomas Greene on November 13, 1989 pursuant to a pre-trial conference with Steven F. Alder representing the plaintiff and appearing pro se as a defendant and cross-claim plaintiff and Kirk C. Lusty, Trial Attorney, Tax Division, United States Department of Justice. At the pretrial conference Steven F. Alder informed the Court that the plaintiffs no longer wished to pursue the above-entitled action and that he, personally, no longer wished to pursue his cross-claim against the United States. Therefore, it is hereby ordered:

1. The cross-claim of Steven F. Alder against the United States is dismissed with prejudice;
2. The complaint of plaintiffs Bruce J. McDermott and Betty M. McDermott, insofar as that complaint seeks relief against the United States, is dismissed with prejudice; and
3. The Clerk of the Court is directed to pay to the United States, c/o Kirk C. Lusty, Trial Attorney, Tax Division, U.S. Department of Justice, P.O. Box 683, Ben

Franklin Station, Washington, D.C. all funds now held by the Clerk of the United States District Court in the above-entitled action.

Dated this 20th day of Nov., 1989.

BY THE COURT

/s/ J. Thomas Greene  
J. THOMAS GREENE  
United States District Judge

APPROVED AS TO FORM:

/s/ Steven F. Alder  
STEVEN F. ALDER  
Attorney for Plaintiffs and  
Defendant and Cross-Claim  
Plaintiff Pro Se

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SUPREME COURT OF THE UNITED STATES

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No. 91-1229

UNITED STATES by and through INTERNAL  
REVENUE SERVICE, PETITIONER

*v.*

BRUCE J. McDERMOTT, *et al.*

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**ORDER ALLOWING CERTIORARI**

Filed May 26, 1992

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The petition herein for a writ of certiorari to the  
United States Court of Appeals for the Tenth Circuit is  
granted.

May 26, 1992